

Appl. No. 10/757,629
Atty. Docket No. 8194C
Amdt. dated March 23, 2005
Reply to Office Action of December 23, 2004
Customer No. 27752

REMARKS

Claims 1-10 are pending in the present application. No claim amendments have been made herein. Claims 1-10 remain in the present application.

Objection to the Drawings

The subject Office Action states that the drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: z-axis.

Applicants have herein amended the Drawings in accordance with the Examiner's recommendation.

Rejection Under 35 USC §102 Over Scripps

The subject Office Action states that "Claims 1 and 8-10 are rejected under 35 U.S.C. §102(b) as being anticipated by Scripps (US Patent No. 4,846,815)." More specifically, the Office Action states:

With regard to Claim 1 the Scripps reference discloses a wearable article with a surface fastening system with first fastening element 53 and second surface fastening element 54 that engage each other in a face-to-face relationship (see Column 9, lines 48-56). The Scripps reference also discloses elastic members 18 that "are affixed to the diaper 10 along both longitudinal marginal portions 50", thus containing a primary direction of load bearing as claimed (see Column 6, line 64). The Scripps reference teaches a base 68 in second member 54 which "provides strong backing for plurality of engaging elements 74" and a first surface 70 that is analogous to longitudinally inboard edge of engaging element 74 with a stem 76 that has increasing angles from base 68 (see Column 10, lines 46-52). The stem 76 on the first surface 70 is analogous to the increasing dimension Y from the outboard edge of the first fastening element claimed. The disclosed fastening system of Scripps contains a fastening device 52 that resists the shear stresses and peel forces, which act on the waist portions during use (see Column 8, line 17-20). (*emphasis added*)

With regard to Claims 8-10 the Scripps reference discloses "a disposable diaper comprising an absorbent core that is encased between a liquid pervious topsheet and a liquid impervious backsheet, elasticized leg openings, and a fastening device for securing the diaper on the wearer" as claimed.

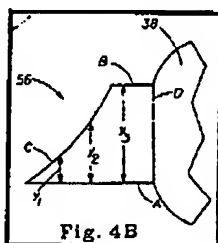
As it relates to claim 1, Applicants respectfully assert that the subject Office Action has failed to make a valid case of anticipation in light of Scripps. Caselaw clearly states that, "A

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claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); See also MPEP § 2131. Applicants respectfully assert that Scripps neither expressly nor inherently describes the following claim limitations:

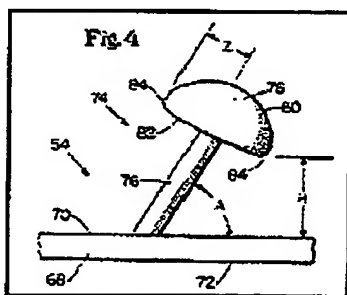
"...the surface fastening system further including an effective dimension Y extending substantially parallel to a longitudinal axis of the article, the effective dimension Y increasing from a laterally outboard edge of the first fastening element to a laterally inboard edge of the first fastening element..."

These claim limitations are exemplified in Figure 4B of the present application:



As illustrated, dimension Y extends substantially parallel to a longitudinal axis of the article and does not substantially extend into the page (i.e., z-direction).

Whereas, in contrast, Scripps teaches a dimensional change into the Z-direction, not the Y-direction.



"Referring to FIG. 4, a preferred engaging element 74 is shown to comprise a stem 76 and an enlarged head 78 having a top surface 80 and a bottom surface 82. The engaging element 74 is preferably disposed relative to the base at an angle "A" between the stem 76 and the base 68 of between about 30° and about 90° and, more preferably, between about 45° and about 75°." (col. 10, ll 46-52)

"The engaging elements 74 extend from the fastening surface 60 of the user's end 58 so that the engaging elements 74 contact the fiber elements 62 of the first member 53." (col. 13, ll 42-45) (emphasis added)

For these reasons, Applicants respectfully assert that this rejection is overcome as it relates to claim 1. Further, Applicants respectfully assert that since Claims 2-10 depend from Claim 1, then the remaining 35 U.S.C. §102 and §103(a) rejections are similarly overcome.

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Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. §102 and §103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-10 is respectfully requested.

Respectfully submitted,

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By

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Customer No. 27752
8194C Amendment to OA 12-23-04.doc